

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Comprehensive Review of Universal Service Fund	)	WC Docket No. 05-195
Management, Administration, and Oversight	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Schools and Libraries Universal Service Support	)	CC Docket No. 02-6
Mechanism	)	
	)	
Rural Health Care Support Mechanism	)	WC Docket No. 02-60
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Changes to the Board of Directors for the	)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.	)	

**COMMENTS OF SBC COMMUNICATIONS INC.<sup>1</sup>**

SBC has long supported Commission efforts to develop programs, policies and rules to ensure the continued availability to all Americans of communications services at just, reasonable and affordable rates, as well as to encourage and promote universal service for eligible schools and libraries, and health care providers. SBC thus welcomes the Commission's decision to initiate a review of the management and administration of the Universal Service Fund (USF) to ensure efficient and effective administration of its universal service support mechanisms, and minimize the risk of waste, fraud and abuse in

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<sup>1</sup> SBC Communications Inc. files these comments on behalf of itself and its operating company affiliates, including: Southwestern Bell Telephone, L.P.; Nevada Bell Telephone Company; Pacific Bell Telephone Company; Illinois Bell Telephone Company; Indiana Bell Telephone Company, Incorporated; Michigan Bell Telephone Company; The Ohio Bell Telephone Company; Wisconsin Bell, Inc.; and The Southern New England Telephone Company.

those programs.<sup>2</sup> But, while this review of USF management and administration is appropriate, SBC does not believe a radical overhaul or replacement of USAC, as the program administrator, is necessary. Inefficiencies and other deficiencies in USF administration and management often result from ambiguities in the rules and policies governing universal service, and insufficient consideration of operational and implementation issues relating to those rules and policies. Accordingly, the Commission should focus on developing and implementing procedures to ensure that operational and implementation issues are fully evaluated and resolved when it adopts new rules and policies. By providing more explicit direction to USAC concerning not only the substantive requirements, but also the procedural and operational aspects of the Commission's universal service support mechanisms, the Commission would go a long way towards ensuring efficient and effective administration of its universal service support programs.

SBC also supports the Commission's efforts to streamline the e-rate program and funding process, while still protecting against waste, fraud and abuse. SBC believes that a new program structure that provides funds directly to applicants, possibly using a formula to distribute funds based on school size or demographics, could significantly simplify and improve the efficiency of the program. And, while some additional flexibility in supported services is appropriate – for example, to enable applicants to use support to obtain access to advanced telecommunications and other services (such as

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<sup>2</sup> *Comprehensive Review of Universal Service Fund Management, Administration and Oversight, et al.*, WC Docket 05-195, *et al.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 05-124 (rel. June 14, 2005) (*Notice*).

VoIP) without regard to regulatory classification, the Commission must ensure that such support does not stray from congressional objectives.

In any event, while this review of USF administration is important, the Commission should take care to ensure that it does not distract attention or divert resources from the much larger and more significant need to reform the substance of its universal service policies and programs (and, in particular, its high-cost support mechanisms) in light of technological, market, regulatory and judicial developments, as required by section 254 and the Tenth Circuit Remand.<sup>3</sup>

**I. The Commission Should Implement Steps to Vet Operational and Implementation Issues Prior to Adopting New Rules.**

In the *Notice*, the Commission asks whether it should revamp the current USF administrative structure by replacing USAC as the permanent administrator of the USF programs with another type of structure or administrative entity, such as by using a competitive bid process to appoint a new entity that would be subject to replacement after a period of time.<sup>4</sup> SBC does not believe that such a radical overhaul of USF program administration is necessary or appropriate.

As an initial matter, drastically changing the administrative structure of USF would be extremely disruptive to the industry and the USF programs. Among other things, it would require the Commission to expend significant resources to establish a new administrative structure, and likely cause significant confusion among program participants, disrupting more important efforts to substantively reform the Commission's

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<sup>3</sup> *Qwest Corp. v. FCC*, 258 F.3d 1191, 1201 (10<sup>th</sup> Cir. 2001) (holding that the 1996 Act requires the Commission to develop a "complete plan for universal service" that ensures that federal, and any state, support mechanisms work together to achieve the objectives of section 254).

<sup>4</sup> *Notice* at para. 12.

universal service support mechanisms. For example, replacing the USAC with a new administrator selected by competitive bid for a limited term would require funding recipients across the country to expend resources to implement procedures to develop and maintain contacts with each new administrator, and to ensure compliance with any administrative policies or rules established by that administrator. Additionally, appointing an administrator by competitive bid could encourage the new administrator to focus on cutting costs, at the expense of effective program implementation, to increase its profits from administering the USF program.

More importantly, replacing USAC as the administrator of the USF programs would do little to address the existing inefficiencies and other deficiencies in program administration. These deficiencies result largely from ambiguities in the Commission's rules and orders implementing the universal service programs, and a failure to consider operational and implementation issues in adopting those rules and orders. Lacking clear guidance from the Commission, USAC often is forced to do the best it can to interpret the Commission's rules and orders, and implement its own policies and rules to fill in the gaps. Inevitably, USAC is forced to overstep its charter by making policy, rather than simply executing it, and/or delay program implementation by seeking additional guidance from the Commission. Even when USAC engages in behind the scenes dialogue with Commission staff to implement Commission orders, the procedures it adopts may, and often do, go beyond the strict letter of those orders, resulting in delay and a waste of resources as parties seek administrative review and guidance from the agency.

A good example of the problem is USAC's implementation of the Commission's red light policy. When it adopted its red light rules, the Commission did not consider the

implication of those rules for USF, and thus provided USAC no formal guidance as to what, if any, measures it should adopt to implement the red light policy. Left to its own devices, USAC adopted its own red light rules, which, in many cases, have resulted in USAC cutting off USF funding before the Commission's own red light has been activated, and without the benefit of the procedural safeguards included in the Commission's red light rules. SBC previously has brought this matter to the attention of Commission staff, but USAC continues to apply its red light rules absent direction from the Commission.

Replacing USAC as the USF administrator would not address this problem; without clear guidance from the Commission concerning program implementation, any new administrator would still have to fill in gaps in the Commission's universal service rules and orders. What is needed is additional dialogue between the Commission and the administrator, as well as affected parties, before new rules and policies are adopted to ensure that any operational or implementation issues are fully vetted and addressed in the Commission's rules and orders. By providing additional detail, the Commission would provide USAC the guidance it needs to implement the Commission's universal service rules and policies consistent with Commission intent, and ensure that affected parties can seek review or reconsideration from the Commission before the rules go into effect. Alternatively, and as a second best solution, the Commission could require USAC to submit a report on the measures it proposes to adopt to implement new universal service rules and policies, allowing interested parties expeditiously to seek Commission review of those measures for consistency with Commission intent before the measures go into

effect. Such steps would go a long way towards reducing the inefficiencies in program management and administration.

## **II. The Commission Should Streamline the E-Rate Program.**

SBC supports the Commission's efforts to streamline the e-rate program, and has joined with the E-Rate Service Provider Forum (ESPF) to provide comments and proposals on a broad range of e-rate related issues, which, if adopted, would significantly improve the program. SBC writes these separate comments to voice its support for providing funds directly to applicants, possibly based on a formula to distribute funds based on school size or demographics.<sup>5</sup> While such an approach would raise significant issues, as the ESPF rightly observes, it could significantly simplify and improve the efficiency of the program.

Under the existing program structure, applicants must follow a multi-step process to obtain e-rate funding, which then must be funneled to applicants through third-party service providers. This process not only is complex and cumbersome, with potential pitfalls at each step in the process, it also impedes efforts to ensure program compliance because the direct recipient of funding (*i.e.*, the service provider) is not the entity primarily responsible for complying with the e-rate rules. And, while the Commission has significantly improved the process by modifying the commitment adjustment procedures to require USAC to recover improperly disbursed funds from the entity responsible for failing to comply with program requirements, innocent service providers

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<sup>5</sup> See Notice at para. 33. SBC also incorporates herewith its prior comments regarding proposed revisions to FCC Forms 472, 473, and 474, filed in CC Docket No. 02-6, a copy of which is attached hereto as Attachment 1. Additionally, SBC incorporates its views concerning USAC's proposed audit plan, expressed in its April 19, 2005 ,ex parte, also filed in CC Docket No. 02-6 and attached hereto as Attachment 2.

still are at risk of being penalized for applicants' rule violations (for example, if an applicant is found to have violated the rules before funds have been disbursed but after service already has been provided).

Providing funding directly to applicants would greatly simplify and streamline the funding process by eliminating unnecessary steps. In particular, providing funding directly would eliminate the need to pass funding through service providers, reducing costs for all program participants – including service providers (which no longer would need to establish processes for receiving, tracking and disbursing funds to applicants), applicants (which no longer would need processes to track payments through the existing, two-step reimbursement process), and USAC (which could eliminate oversight of service provider's handling of e-rate funds). Indeed, under such an approach, the service provider's role could be scaled back to simply certifying that they have provided certain services to the applicant, which otherwise would be responsible for ensuring compliance with the e-rate rules.

SBC believes that providing funding to applicants using a formula based on school size or other demographic indicia (such as income levels) also could bring significant benefits. In particular, it could significantly streamline the application process by eliminating the detailed application process that, today, determines the amount of funding an applicant may receive. Additionally, a formula-based approach could provide applicants much greater flexibility in purchasing eligible services by not locking them in to particular products or service providers – so long as the services purchased were e-rate eligible and the applicant followed appropriate procurement procedures. It also could provide applicants greater certainty regarding e-rate funding, allowing them to engage in

long-term planning and obtain lower-priced, long-term contracts. A formula-based approach also would provide applicants incentives to use funding in the most efficient, cost-effective manner, eliminating incentives to simply obtain as much funding as possible. Finally, providing funding based on a set formula would allow schools that never have qualified for funding for internal connections to finance such projects.

Of course, before the Commission could adopt a formula-based approach, it would have to develop a more comprehensive plan, including an appropriate transition period, to ensure that all interested parties have an opportunity to comment and that the impact of such a transition is fully understood by all. Additionally, regardless of whether the Commission were to adopt such an approach, it should ensure that funding is used only as intended by Congress – that is, to provide applicants access to advanced telecommunications and information services.<sup>6</sup> Accordingly, while the Commission should expand eligibility to include the full-range of communications technologies (such as IP-based services), it should not expand eligibility to include “training” and “communications-related” services. Not only are such services outside the scope of the Act, including such services would require the Commission to make judgments about matters outside its areas of expertise and create additional grey areas of eligibility that inevitably will lead to compliance problems and require additional Commission oversight.

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<sup>6</sup> 47 U.S.C. § 254(h)(2).



### **III. Conclusion.**

The Commission should modify its management and administration of the universal service fund consistent with the views expressed herein.

Respectfully submitted,

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